

Interim Retail Choice Consumer Protection Standards

SECTION 1. GENERAL PROVISIONS

1. Scope

The following standards shall apply to all electric power suppliers, and gas suppliers. Except where specifically addressing residential customers, the consumer protections contained herein shall pertain to all customers.

2. Definitions

The following words and terms, when used in these standards, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means the “Electric Discount and Energy Competition Act” (P.L. 1999, c.23)

“Advertising” means the activity of attracting public attention to a product, service, or business, etc., as through announcements in print, radio, television, telemarketing, electronically, internet, etc.

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the Board.

"Basic generation service (BGS)" means electric generation service that is provided, pursuant to section 9 of the Act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the Board.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Broker” means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas.

“CFR” means the Code of Federal Regulations.

“Customer information” means individual proprietary information as defined below.

“Customer” means any person that is connected to any part of the transmission and distribution system within a LDC’s service territory within this State.

“Electric generation service” the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

“Electric power supplier” means a person or entity that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of the Act.

“Electric related service” means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end-user’s premises, and the provision of energy consumption management measurement and billing services.

“Energy agent” means a person that is duly registered pursuant to provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold.

“FTC” means the Federal Trade Commission or its successor agency.

“Gas related service” means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user’s premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end-user’s premises, and the provision of energy consumption management measurement and billing services.

“Gas supplier” means a person that is duly licensed pursuant to the provisions of the Act and pursuant to the Board’s licensing standards promulgated pursuant thereto, to offer and assume the contractual and legal responsibility to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the Board pursuant to subsection k. of section 10 of the Act.

“Gas Supply Service” means the provision of the retail commodity of gas, but does not include any regulated distribution service.

“Individual proprietary information” or “customer information” means, but is not limited to, a customer’s name, address, telephone number, electricity and/or gas usage, peak demand and payment history.

“LDC” means local distribution company, referring to the electric and/or gas public utility responsible for distributing power and/or gas to retail customers on behalf of electric power suppliers and/or gas suppliers.

“Marketer” means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers.

“Marketing” means a direct solicitation by a TPS to an individual customer for the purpose of persuading a customer to enter into an agreement for the purchase of electric generation service, gas supply service, electric related service and/or gas related service, such direct solicitation to include direct mailings, telemarketing, internet websites and in-person solicitation.

“Optional services” means services other than electric generation service and/or gas supply service.

“Private aggregator” means a non-government aggregator that is a duly-organized business or non-profit organization authorized to so business in this State enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of natural gas supply service, on behalf of multiple end-use customers by combining the loads of those customers.

“Redlining” means a procedure which involves unreasonable discrimination based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

“Retail sales” means the bundled service provided by the LDC.

“Slamming” means the unauthorized change of a customer’s electric power supplier or gas supplier.

“Third-party Supplier (TPS)” means an electric power supplier or gas supplier as those terms are defined herein, or a person acting on behalf of such suppliers.

“Transmission and distribution system” means any facility or equipment that is used for the transmission, distribution and/or delivery of electricity or gas to the end-use customers including, but not limited to, the land, structures, meters, lines, pipes, switches, valves and all other appurtenances thereof and thereto, owned or controlled by the electric or gas public utility, or LDC, respectively.

3. Advertising Standards

All types of advertising

Any advertisement by a TPS which offers to customers optional services, whether such advertisement is in electronic, print, radio or television media, or via telemarketing or an internet website, which specifically targets residential customers for electric generation service or gas supply service, shall clearly and conspicuously state that such optional services are provided at an additional charge which is not reflected in the advertised cost per kWh or per therm, or the advertised percentage savings.

Electronic, radio and/or television advertising

- (a) A TPS shall include in its advertisements of a general nature, via electronic, radio and/or television medium, the following:
 - i. A toll-free or local telephone number which a customer may call to request detailed information concerning the average price per kWh for and environmental characteristics of electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service; and
 - ii. the LDC(s) in whose service territory(ies) the TPS is offering services.

4. Marketing Standards

- (a) In marketing materials provided by the TPS to residential customers for the purpose of persuading the customer to authorize a switch to the TPS for electric generation service or gas supply service, whether such materials are in hardcopy form, electronically or via internet websites, the following information must be provided:
 - i. The average price per kWh for electric generation service or average price per therm for gas supply service over the term of a contract for the service being offered, exclusive of any charges for any optional services other than electric generation or gas supply service; and
 - ii. The period of time over which the advertised price is valid; and
 - iii. The term (duration) of the contract for which the advertised price is being offered; and
 - iv. The average price per kWh for electric generation service or the average price per therm for gas supply service being charged for basic generation service or basic gas supply service by the LDC over the same period; and

- v. The estimated percentage savings on the total bill which a customer will realize under the advertised price relative to the customer taking basic generation service or basic gas supply service from the LDC
 - a. The estimated percentage savings on the total electric bill, referred to in v. above, shall not include and shall only represent the savings above and beyond the rate reductions which all electric customers receive under the Act whether they switch suppliers or not; or
 - vi. If a TPS does not offer a fixed price or guaranteed price electric generation service or gas supply service, the TPS shall describe in clear and conspicuous language the mechanism or formula by which the price is determined, and provide a detailed customer bill comparison which demonstrates for a residential customer: for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service; for the term of the contract being offered; such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.; and
 - vii. The TPS' license number;
 - viii. the LDC(s) in whose service territory(ies) the TPS is offering the advertised services; and
 - ix. Other materials or information which may be required to comply with the Environmental Disclosure Standards.
 - x. A clear statement indicating whether or not the TPS offers budget billing.
- (b) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9 pm and 8 am.
 - (c) A TPS may not market to retail customers prior to its receipt from the Board of a supplier license, and in no event prior to August 1, 1999,
 - (d) The TPS must clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.
 - (e) For optional services being offered by the TPS, the TPS' marketing materials shall clearly and conspicuously identify each separate charge.

- (f) The TPS shall not represent that it can terminate any services from the LDC, including but not limited to, delivery of electricity and/or natural gas.
- (g) The TPS shall not make misrepresentations, in its solicitations or its marketing materials or any way, in violation of any standards implemented by the Board pursuant to the Act, of any other consumer protection laws or rules implemented or enforced by the Division of Consumer Affairs, or of the mechanics of the customer enrollment process adopted by the Board.
- (h) The TPS shall not commit dishonesty, fraud or deceit.

Prohibition of Discriminatory Marketing

- (a) A TPS shall not make a decision to market to a customer or customer group, or to accept or reject a customer, based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.
 - i. Marketing to specific groups, such as housing associations, developments, senior citizens organizations, church/religious associations, and the like, shall not be considered discriminatory pursuant to this subsection or the Act.
 - a. However, once a TPS has received applications from specific groups, the decision to accept or reject any customer or groups thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.
 - ii. Marketing to specific LDC service territory(ies) shall not be considered discriminatory pursuant to this subsection or the Act.
 - a. However, once a TPS has received applications from customers within a specific LDC service territory(ies), the decision to accept or reject any customer or groups thereof, shall not be based upon race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location.

5. Credit

- (a) A TPS shall employ uniform income, security deposit and credit requirement(s) for purposes of making decisions whether to offer service to a customer within the same customer class;
- (b) A TPS shall maintain a written explanation of its income, security deposit and credit requirements, in compliance with the Licensing Standards, which shall be made available on a confidential basis to the Board and the Division of Consumer Affairs within 48 hours upon request, in the event of a formal investigation of the TPS' credit or income requirement practices;

- (c) A TPS shall apply such income, security deposit and credit requirements in a uniform manner for all customers for the same customer class.
- (d) In the event that a TPS requires a security deposit from a customer, such deposit must be maintained in an interest bearing escrow account, and the customer must be provided a receipt.

6. Contracts

- (a) A TPS shall not be permitted to provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof;
- (b) A TPS contract shall clearly and conspicuously state that the purpose of this documents to authorize a change in the customer's TPS, and includes explicit terms and conditions which shall include, at a minimum:
 - i. a clear statement of the duration of the contract;
 - ii. the price per kWh or therm or, if a fixed pricing arrangement is not made, a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined; if the contract contains no particular pricing terms, but rather, expresses the charges for service rendered on a percentage savings basis, the contract language must clearly and conspicuously state the percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;
 - iii. A complete list of any other fees, including but not limited to, early termination penalties, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and interest charges, which will or can be imposed on residential customers, including but not limited to the specific conditions under which such penalties and/or fees can be imposed.
 - iv. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have 14 calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the 14 day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his/her selection.
 - v. A statement of the TPS' termination rights, which shall explain the specific conditions under which the TPS may terminate service, and that at a minimum the TPS provide the customer with at least a separate 30 days' written notice of the termination and opportunity to remedy the termination condition.
 - vi. No statement which asks that any customers waive any rights they have under New

Jersey or federal Consumer Protection laws.

- (c) A TPS contract shall include the TPS' local or toll-free telephone number, the LDC's emergency and toll-free customer service telephone numbers and the Board's Division of Customer Relations toll-free telephone number;
- (d) A TPS contract must state that the customer should call the LDC in the event that an electric/gas-related emergency, such as a gas leak or power outage, exists;
- (e) A TPS contract shall explicitly permit a residential customer to terminate the contract, with 48 hour notice without penalty, as a result of a relocation within or outside the LDC's franchise area, disability and/or death;
- (f) A TPS contract must clearly and conspicuously display the TPS' name and license number issued by the Board;
- (g) In compliance with the Licensing Standards, a TPS shall file a sample copy of its residential contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis; the initial filing of the sample copy of TPS contract(s) shall include a consumer complaint resolution process; a TPS shall file a sample copy of subsequent revisions of its contract(s) with the Secretary of the Board, with a copy provided to the Division of Consumer Affairs and the Division of Ratepayer Advocate on a confidential basis, within three (3) business days;
- (h) In no event shall a TPS cease to deliver electric power supply, or natural gas supply, subject to the terms and conditions of the contract and the LDC tariff, to the LDC on behalf of a residential customer, upon less than the minimum 30 days' notice period;
- (i) Where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and condition and pricing.

7. Customer Bills

- (a) TPS bills must be in clear and conspicuous language and include the name, address and local and/or toll-free telephone number of the Board and TPS and toll-free customer service and emergency telephone numbers of the LDC.
- (b) TPS bills must contain sufficient information to allow customers, to calculate their bills which information shall include but not be limited to kWh or therm usage billing period which shall include the start and end dates, billing date, next estimated meter reading date, remaining balance and payment(s) applied.
- (c) A TPS or a LDC shall not charge a fee to residential customers to either commence and/or terminate electric generation service or gas supply service.

- (d) If optional services are provided, the associated charge(s) shall be itemized separately on the customer's bill.
- (e) The TPS and LDC's charges shall be separately identified on the bill if the customer chooses the one-bill option.

8. Customer Information

- (a) Customer information shall not be disclosed, sold or transferred to a third party without the affirmative written consent of the customer or alternative Board-approved consent methodology, except under certain conditions, e.g., a third-party performing services directly for a TPS under a binding confidentiality agreement.
- (b) In the case of a transfer or sale of a TPS, customer consent shall not be required to transfer customer information to the subsequent owner of the business in order to maintain continuity of electric generation service or gas supply service.

9. Complaints

- (a) TPS shall use good faith efforts to respond to and resolve all complaints promptly.
 - i. If the TPS has been advised that the customer is not satisfied with the TPS' response, the TPS must advise the customer that customer can contact the Secretary of the Board, at 973-648-2065, to request an Alternate Dispute Resolution procedure or to file a formal complaint.
- (b) TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, with 3 days' notice.

10. Termination

- (a) A TPS shall not terminate a residential contract due to non-payment in cases where charges are in dispute, provided undisputed charges are paid and the TPS and customer agree to resolve the disputed charges within 30 days of the time that a customer has notified the TPS that charges are in dispute.
- (b) Residential may be terminated for non-payment at the time of the next meter reading but with at least the minimum 30 days' written notice, which shall include a toll-free or local telephone number of the TPS and the Board, the effective date, the reason for the contractual termination, timetable for the residential to choose another TPS before defaulting to basic generation service or gas service, and 15 to 30 days' notice to the LDC.
- (c) TPS shall not terminate a separate or independent residential contract due to non-payment of a non-residential contract.

- (d) TPS shall not terminate a residential contract for gas supply service or electric generation service for non-payment of another service, including gas supply service, gas related service, electric generation service or electric related service.